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**SUPREME COURT. U. S.**

**No. 548**

U.S. Supreme Court, U.S.  
**FILED**

**JUN 26 1969**

**JOHN F. DAVIS, CLERK**

**In the  
Supreme Court of the United States**

**OCTOBER TERM, 1968**

**RODERICK JENKINS,**

**Appellant,**

**v.**

**JOHN JULIAN MCKEITHEN, CECIL MORGAN,  
PAUL M. HEBERT, FLOYD C. BOSWELL,  
RALPH F. HOWE, A. R. JOHNSON, III,  
AND BURT S. TURNER,**

**Appellees.**

**APPLICATION FOR REHEARING**

**JACK P. F. GREMILLION,  
Attorney General,  
State of Louisiana,  
Baton Rouge, Louisiana.**

**ASHTON L. STEWART,  
Special Assistant Attorney  
General of the State of  
Louisiana,  
604 Union Federal Building,  
Baton Rouge, Louisiana 70801.  
Attorneys for Appellees**



**In the  
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OCTOBER TERM, 1968

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RODERICK JENKINS,

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v.

JOHN JULIAN MCKEITHEN, CECIL MORGAN,  
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**APPLICATION FOR REHEARING**

John Julian McKeithen, Cecil Morgan, Paul M. Hebert, Floyd C. Boswell, Ralph F. Howe, A. R. Johnson, III, and Burt S. Turner, defendants and appellees in the captioned cause, respectfully petition the Court for a rehearing in this case, wherein the judgment below was reversed and the cause was remanded for further proceedings. Further proceedings in this case on remand by the District Court will serve no useful end.

The gist of the prevailing opinion is that the statute is not unconstitutional on its face, but that according to the allegations of the complaint, a cause of action has been alleged if the "Commission is designed to and does indeed act in the manner alleged." We believe that the Court has erred in interpreting the allegations of the complaint. The allegations of the complaint, as amended, are only that the "defendants"

(A-6), "said officials" (A-6), "defendants" (A-7) "defendants" (A-9), "officials" (A-24), "defendants" (A-25), "defendants" (A-28) and "defendants" (A-30) have done the things complained of. The complaint has astutely avoided alleging that any of the actions alleged were actions of the Commission. Only six of the nine members of the Commission were made defendants. There are no allegations that any of the actions complained of were contained in any finding or report of the Commission and there could be no report or findings without a public hearing. The statute prohibits the Commission from acting unless there was a public hearing:

R.S. 23:880.12A. "The commission shall base its findings and reports only upon evidence and testimony given at public hearings. xxx."

The alleged actions of the defendant members of the Commission, even if true, would be contrary to and prohibited by the statute:

R.S. 23:880.12B. "It shall be a misdemeanor for any member of the Commission, its counsel or employees, to make public any evidence or testimony taken at a private investigation or at an executive session. xxx."

Therefore, the statute specifically would prevent the Commission from acting as alleged, unless there had been a public hearing, and the complaint does not allege a public hearing. The complaint says that the six members acted, and does not mention the Commission. The statute specifically prohibits the individual members from acting as alleged, and no part of the

actions of such individual members who are made defendants arise out of, or relate to, the application of the procedures of the statute in question. The statute has not been "administered" by actions of individual members when they act outside of and directly contrary to the provisions of such statute.

The Court observed in the opinion that the complaint was "inartfully drawn", and the Court then apparently treated the allegations that the "defendants" did the acts alleged as though it was the "Commission" which had so acted. This was error. The complainant has very astutely alleged that the acts complained of were by six members of the Commission—the complaint has not alleged the acts as those of the Commission in administering the act. The fact that only six of the nine members of the Commission were made defendants is most relevant on this score. So is the fact that the Commission itself was not made a defendant. We say that the complainant has intentionally so drawn the complaint because the complainant knows that the Commission has not held a public hearing where complainant was ever mentioned, nor has the Commission ever made any report or findings as to complainant, as such would be matters of public record.

Accordingly, we submit that the complainant has not alleged a cause of action, as there are in truth no allegations that the Commission itself, in administering the Act, has acted, but only the allegations that some of the members of the Commission have acted in the manner alleged. And, of course, even if the claimed ac-

tions of these individual members were true, their actions would be contrary to and in direct conflict with the provisions of the Act.

We respectfully submit that this petition for rehearing should be granted, and the judgment below affirmed.

Respectfully submitted,

JACK P. F. GREMILLION,  
Attorney General,  
State of Louisiana,  
Baton Rouge, Louisiana.

ASHTON L. STEWART,  
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604 Union Federal Building,  
Baton Rouge, Louisiana 70801.  
Attorneys for Appellees



**CERTIFICATE OF COUNSEL**

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

Baton Rouge, Louisiana, June \_\_, 1969.

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**ASHTON L. STEWART,**  
Special Assistant Attorney  
General of the State of  
Louisiana.

Counsel for petitioner



**PROOF OF SERVICE**

I, Ashton L. Stewart, Special Attorney General of the State of Louisiana, attorney for applicants herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the \_\_\_ day of June, 1969, I served a copy of the foregoing Application for Rehearing on the appellant herein, by mailing said copy in a duly addressed envelope with first class postage prepaid to his attorney of record, J. Minos Simon, Esquire, 1408 Pinhook Road, Lafayette, Louisiana 70501.

Baton Rouge, Louisiana, this \_\_\_ day of June, 1969.

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**ASHTON L. STEWART,**  
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